

2. In short, Plaintiff's entire case against this Defendant is based on his alleged presence at one or more meetings, where Plaintiff claims that its principal was told untruths by others. Specifically, Plaintiff's entire factual support for all causes of action against this Defendant, is the following:

"Martinez was present when these false representations were made. Because of Martinez's undisclosed commission agreement with the other Seller Defendants, Monarch believes that Martinez knew that each of these statements was false, or was at least severely reckless concerning its truth or falsity. Despite this, Martinez failed to correct the misstatements and benefitted from them when Monarch invested in WMC." (Dkt. No. 40, ¶ 47)

II. AUTHORITY & ARGUMENT

3. A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is subject to the same standard as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir.), *cert. denied*, 555 U.S. 1031, 129 S.Ct. 600, 172 L.Ed.2d 456 (2008). Federal Rule of Civil Procedure 12(b)(6) allows dismissal if a plaintiff fails to state a claim upon which relief may be granted. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007). A Rule 12(b)(6) motion to dismiss requires the court to accept the factual allegations of the complaint as true, view them in a light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor. *See Doe*, 528 F.3d at 418. To defeat the motion, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 127 S.Ct. at 1974. Mere conclusory allegations are not sufficient. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir.2000). "[A] formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S.Ct. at 1965. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of

misconduct, the complaint has failed to adequately state a claim.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009). In the case at bar, there are no specific facts plead against Nash Martinez which would give rise to liability. Further, the allegations of wrongdoing against this Defendant are merely conclusory assertions and are not entitled to assumption of truth and should be disregarded. Therefore, this Defendant respectfully moves the Court to dismiss the claims against him for failure to state a claim upon which relief can be granted.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant Nash Martinez respectfully moves the Court to dismiss the claims against him for failure to state a claim upon which relief can be granted, that this Defendant recover his costs and attorneys’ fees and for such other and further relief, at law and in equity, to which this Defendant may show himself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by CM/ECF on this **30th day of November, 2015** as follows:

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